IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3564 OF 2003

IN

COUNTER CLAIM (LODG) NO.3189 OF 2003

IN

SUIT NO.831 OF 2003

Mohammed Khalil Khan & another. ...Petitioners (orig.Deft.nos.1 & 2).

vs.

1. Najeebunissa w/o.Mohammed Shami ...Defendants in counter claim (No.1 orig.plff. And nos.2 to 7 orig.defts)
.

Mr.A.G.Damle, for petitioners i.e. Defendant nos.1 and 2 in suit. .

Ms.Sweta Joshi, for Defendant nos.2 to 6.

CORAM: D.K.DESHMUKH,J.

DATED: 12th January, 2007.

P.C.:-

1. This notice of motion has been taken out by the original defendant nos. 1 and 2 who are the plaintiffs in the counter claim for an order of temporary injunction against the original plaintiffs

restraining them from transferring, selling etc. the flat no.101 and 102. Admittedly, the original plaintiffs and the defendants other than the original defendant nos. 1 and 2 who have filed the counter claim, are in possession of those flats. The plaintiffs in the counter claim are claiming temporary injunction in relation to those flats because, according to the plaintiff, those flats were the properties of their father by name Samee Seth. They made that claim on the basis of letter dated 1.4.1999 which was addressed to Mr.Samee Seth by the builder who has constructed the building where these two flats are situated and a letter written to the builder pursuant to the letter dated 1.4.1999 intimating the builder that Mr.Samee Seth has expired. Perusal of the letter dated 1.4.1999 shows that, according to the builder, Mr.Samee Seth had booked flats in the building. The letter does not show as to what was the payment made by the deceased to the builder for securing flats. The letter shows that even flat numbers were not decided as to which flats were to be allotted by the builder. Therefore, letter dated 1.4.1999 and the reply by the defendant nos.1 and 2 to that letter by itself does not show that the flats were owned by the deceased. On the contrary, the defendants have produced copies of the documents which show that by a registered conveyance those flats have been transferred by the builder in favour of the defendants other than original defendant nos. 1 and 2. Though the affidavit in reply was filed in the year 2004, till date the defendant nos. 1 and 2 who are the

plaintiffs in the counter claim have not taken any action for getting the registered conveyance in relation to the flats set aside or canceled. Therefore, as by registered conveyance the defendants other than defendant nos.1 and 2 have become the owners of the flats, at this stage the Court will have to go by the registered documents, and therefore, prima facie it appears that the deceased was not the owner of those flats and therefore, the defendant nos. 1 and 2 who have taken out this notice of motion will not have any interest in the flat. The original defendant nos. 1 and 2 who are the plaintiffs in the counter claim, thus, do not have prima facie case in their favour and therefore, they are not entitled to a temporary injunction in their favour. The notice of motion is therefore, disposed of.